

(22,481.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 860.

MORRIS GLICKSTEIN

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

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1 In the United States Circuit Court of Appeals, Fifth Circuit.
Number 2098.

MORRIS GLICKSTEIN, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Error to the District Court of the United States for the Southern
District of Florida.

This cause coming on for hearing before the court, after full argument, it is ordered, in view of the many important questions arising upon the record and the doubt which the court have as to the correct decision thereof, that one question arising on the record in said cause shall be certified to the Supreme Court of the United States for its instruction thereon, and that, accompanying said question, there shall also be certified a statement from which such question can be understood, which statement is as follows:

On June 10, 1910, an indictment was found and filed in said district court against said Morris R. Glickstein, which is in substance as follows:

"The grand jurors of the United States, empaneled, sworn and charged at the term aforesaid of the court aforesaid, on their oath present that heretofore, to-wit, on the 2nd day of January, A. D. 1909, one Morris R. Glickstein was duly and lawfully adjudged a bankrupt within the meaning and purview of the Acts of Congress of the United States of America, by James W. Locke, United States District Judge for the Southern District of Florida; that said adjudication was had and took place upon the voluntary petition and request filed by him, the said Morris R. Glickstein, with the
2 Clerk of the United States District Court for the Southern District of Florida, on the 2nd day of January, A. D. 1909; that thereafter and in the regular proceedings of the administration of the said bankrupt's estate, there came on to be held, on the 26th day of January, A. D. 1909, at Jacksonville, Duval County, Florida, within said District, and within the jurisdiction of this court, before William A. Hallows, Jr., a duly appointed, qualified and acting referee in bankruptcy for the counties of Duval, Nassau, Clay, St. Johns, Putnam, Baker, Brevard and Volusia, within said district, the first meeting of the creditors of the said Morris R. Glickstein, bankrupt, as aforesaid; that at said meeting, on said date, the bankrupt, Morris R. Glickstein, was, by the said William A. Hallows, Jr., referee as aforesaid, duly sworn for examination by the creditors of him, the said Morris R. Glickstein, bankrupt, at said meeting that the testimony which he, the said Morris R. Glickstein, bankrupt, should give in said examination should be the truth, the whole truth, and nothing but the truth, the said William A. Hallows, Jr., as referee in bankruptcy as aforesaid, as such referee in bankruptcy,

then and there having due and competent authority to administer such oath to said Morris R. Glickstein, bankrupt; that the number of trunks of goods sent by him, the said Morris R. Glickstein, the said bankrupt, from Jacksonville, Duval County, Florida, to St. Augustine, St. Johns County, Florida, to go into the store of him, the said Morris R. Glickstein, bankrupt, at said St. Augustine, then and there became a material question at said examination; and the said Morris R. Glickstein, being so sworn as aforesaid, did then and there wilfully and contrary to his said oath, testify in substance as follows: that the total number of trunks of goods sent by him, the said Morris R. Glickstein, bankrupt, from Jacksonville, Duval County, Florida, to St. Augustine, St. Johns County, Florida, to go into the store of him, the said Morris R. Glickstein, bankrupt, at St. Augustine aforesaid, was two, whereas, in truth and in fact, the total number of trunks of goods sent by him, the said Morris R. Glickstein, bankrupt, from said Jacksonville to said St. Augustine, to go into the store of him, the said Morris R. Glickstein, bankrupt, at said St. Augustine, was a greater and much larger number of trunks (the exact number thereof being to said grand jurors unknown) as he, the said Morris R. Glickstein, bankrupt, then and there well knew; and he, the said Morris R. Glickstein, bankrupt, did not then and there believe that the total number of trunks of goods sent by him, the said Morris R. Glickstein, bankrupt, from said Jacksonville to said St. Augustine, to go into the store of him, the said Morris R. Glickstein, bankrupt, at said St. Augustine, was two;

3 "And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Morris R. Glickstein, bankrupt, in the manner and form aforesaid, having taken an oath before a competent tribunal, in a case wherein a law of the said United States authorizes an oath to be administered, that he would truly depose and testify, wilfully and contrary to his said oath did depose and state material matters which he did not then believe to be true, and thereby did commit wilful and corrupt perjury; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States."

The said Glickstein demurred to said indictment, and as grounds of demurrer, among others, alleged the following:

"(a) A prosecution for perjury against a bankrupt at a meeting of his creditors will not lie."

"(b) The indictment was based upon testimony given by the bankrupt affecting the administration and settlement of his estate."

"(c) A person cannot be compelled in any criminal case to be a witness against himself."

The district court overruled the demurrer, and a plea of "not guilty" was entered. On the trial, the United States offered to prove that Glickstein, at the first meeting of his creditors, after being duly sworn, testified, in substance, as charged in said indictment. By his attorney, Glickstein objected to the admissibility and legality of such evidence, alleging as grounds of objection, among others the following:

"(a) A prosecution for perjury against a bankrupt at a meeting of his creditors will not lie."

"(b) It appears that the testimony which the witness is asked to give was testimony given in evidence by the bankrupt affecting the administration and settlement of the bankrupt's estate."

"(c) A person cannot be compelled in any criminal case to be a witness against himself."

4 These objections were overruled, and this evidence was received. Exceptions to these and many other rulings of the court were reserved. The defendant was convicted, and sued out this writ of error; and assigns said rulings and twenty others as errors.

Section 7 of the Bankruptcy Act of 1898 provides that:

"The bankrupt shall * * * (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding."

The question certified is as follows:

Is said subsection 9 and the immunity afforded by it applicable to a prosecution for perjury committed by the bankrupt when examined under it?

DON A. PARDEE,
A. P. McCORMICK,
DAVID D. SHELBY,

*Judges of the United States Circuit Court of Appeals
for the Fifth Circuit, Sitting in said Case.*

Filed 3 day of Jan'y, 1911, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

5 UNITED STATES OF AMERICA,
Fifth Judicial Circuit, ss:

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Morris R. Glickstein, plaintiff in error, versus The United States, defendant in error, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the City of New Orleans, Louisiana this 3d day of January, A. D. 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
*Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.*

Endorsed on cover: File No. 22,481. U. S. Circuit Court Appeals 5th Circuit. Term No. 860. Morris Glickstein vs. The United States. Filed January 16th, 1911. File No. 22,481.



In the Supreme Court of the United States.

OCTOBER TERM, 1910.

MORRIS GLICKSTEIN, PLAINTIFF IN ERROR, }
v. } No. 860.
THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MOTION TO ADVANCE.

This is a certification of a question by the Circuit Court of Appeals for the Fifth Circuit.

Morris Glickstein was indicted on June 10, 1910, in the District Court of the United States for the Southern District of Florida, under section 5392, for perjury. The indictment charges that on January 2, 1909, Glickstein had been duly and lawfully adjudged a bankrupt by the United States district judge for the Southern District of Florida upon his voluntary petition and request; that thereafter, in the regular proceedings in the administration of the bankrupt's estate, there was held on January 26, 1909, before a duly appointed, qualified, and acting referee in bankruptcy, the first meeting of the creditors of Glickstein; that at said meeting Glickstein was sworn by the referee for examination by the creditors; that a material question as to the number of trunks of goods